IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 12 OF 2001.

Hariram Waghmare, s/o
Govind Waghmare, Central
Jail, Aguada, Goa. ... Appellant.

Versus

State through Public
Prosecutor. ... Respondent.

Mr. S.K. Pai, Advocate appointed as Amicus Curiae for the Appellant.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent State.

Coram: P.V. HARDAS, J.

Date: 6th March 2003.

ORAL JUDGMENT.

Being aggrieved by his conviction for an offence punishable under Section 376 of the Indian Penal Code and sentenced to rigorous imprisonment for 10 years and fine of Rs. 5,000/-, passed by the IInd Additional Sessions Judge, South Goa, Margao, by Judgment, dated 27th July 2000, in Sessions Case No. 25/1999/II, the appellant/accused has filed the present appeal.

2. The facts necessary for the decision of the appeal are set out hereunder:-

P.W.7 P.I. Mangaldas Dessai was attached to the Maina Curtorim Police Station. On 13th May 1999 a complaint was presented by P.W.3 Anita Waghmare, daughter of Hariram Waghmare, aged 8 years, for an

offence of rape against her father, the appellant/accused. The said complaint is at Exhibit P.W.3/A. P.W.7 P.I. Dessai registered an offence under Section 376 of the Indian Penal Code and sent P.W.3 Anita and the appellant/accused for medical examination to the Goa Medical College.

3. The appellant/accused was examined by P.W.5 Dr. E.J. Rodrigues, who did not find any injuries on the person of the appellant/accused. However, he found evidence of sexually transmitted disease. The medical examination report of the appellant/accused is at Exhibit P.W.5/A.

4. P.W.3 Anita was examined by one Dr. Sushma Prabhu under the supervision of P.W.6 Dr. Savita Chandra. P.W.6 Dr. Chandra found a single bruise of 0.5 cm x 0.5 cm on the inner aspect of the left labia majora, red in colour and tender. She also found that the hymen was intact but was congested, red in colour and tender to touch. She had obtained two vaginal swabs to be sent for semen analysis and culture. According to P.W.6 Dr. Chandra, the findings were suggestive of attempted vaginal penetration. The report of examination of P.W.3 Anita is at Exhibit P.W.6/A. Incidentally, it may be stated that the report of the Central Forensic Science Laboratory, at Exhibit P.W.7/B,

shows the presence of semen and spermatozoa in the two vaginal swabs of P.W.3 Anita.

5. On 15th May 1999 P.W.7 P.I. Dessai conducted the scene of offence panchanama, at Exhibit P.W.4/A, in the presence of P.W.4 Derrick Correia and one Alex Lawrence. P.W.7 P.I. Dessai then obtained the Birth Certificate of P.W.3 Anita from the Government Primary School and the said Certificate is at Exhibit P.W.7/A. Incidentally, the appellant/accused, in his examination under Section 313 of the Code of Criminal Procedure, has not denied the age of P.W.3 Anita. P.W.7 P.I. Dessai, after recording the statements of P.W.1 Antoneta Miranda and P.W.2 John Fernandes, submitted the charge-sheet against the appellant/accused.

6. The learned Sessions Judge, South Goa, Margao, vide Exhibit 5, framed a charge against the appellant/accused for an offence punishable under Section 376 of the Indian Penal Code. The appellant/accused, vide Exhibit 6, which is the plea of the appellant/accused, pleaded not guilty and claimed to be tried. The prosecution in support of its case examined 7 witnesses. The learned trial Court accepted the testimony of the prosecutrix P.W.3 Anita, which was corroborated by the medical evidence, and convicted and sentenced the appellant/accused as aforestated. Hence,

the present appeal.

7. P.W.1 Antoneta states that they had permitted the accused to occupy one room of their house. The accused used to pay rent to her husband, who is P.W.2 John. P.W.3 Anita was residing alongwith the accused in the rented room. On 12th May 1999, at about 6.00 p.m. P.W.3 Anita informed her that she was having pain in her private part. P.W.1 Antoneta, therefore, took P.W.3 Anita to a doctor by name Anil. The doctor examined P.W.3 Anita and gave a note to P.W.1 Antoneta and requested her to take P.W.3 Anita to the Hospicio Hospital. P.W.1 Antoneta then took P.W.3 Anita to the Hospicio Hospital and there P.W.3 Anita had disclosed to the doctor that her father, appellant/accused, had committed rape on her. In the cross-examination P.W.1 Antoneta has admitted that P.W.3 Anita had not disclosed anything to Dr. Anil in her presence and she was not present when the doctor from the Hospicio Hospital had examined P.W.3 Anita. She also stated that she was not present when P.W.3 Anita had informed the doctor that her father had raped her.

8. P.W.2 John is the husband of P.W.1 Antoneta and he states about P.W.1 Antoneta taking P.W.3 Anita to the doctor. In the cross-examination he admitted that the accused had brought his wife to stay with him. His

wife had stayed with the accused for some days and, thereafter, because of a quarrel, had left him. There is nothing in the cross-examination to discredit the version of P.W.1 Antoneta that she had taken P.W.3 Anita to the Hospicio Hospital for examination.

9. P.W.3 Anita in her evidence states that she alongwith her father were residing in the rented room owned by P.W.1 Antoneta and her husband. She states that one day when she was sleeping her father had removed her panty and had also removed his own clothes and committed rape on her. She further states that she had not informed about the incident to anyone due to shame. She states that she had informed P.W.1 Antoneta that she was having pain in her private part and, accordingly, P.W.1 Antoneta had taken her to the doctor and the doctor had referred her to the hospital at Margao. She states that she had informed about the incident to Antoneta and P.W.1 Antoneta in turn disclosed the same to the doctor. She identifies her signature on the complaint Exhibit P.W.3/A. In the cross-examination she admits that she does not remember as to when the accused had last removed her panty and inserted his private part in her vagina. She also admits that she does not recollect as to how many days thereafter she started having problem of urinating. She also admits that her mother had visited them and stayed

in the same room. She further admits that her father had committed the said act after her mother had left the room. She denied the suggestion that her father did not have sexual intercourse with her. She also denied the suggestion that she had been tutored to depose against her father.

10. The cross-examination of the medical witnesses P.W.5 Dr. Rodrigues and P.W.6 Dr. Chandra does not render their evidence unreliable. P.W.5 Dr. Rodrigues is only cross-examined in respect of the sexually transmitted disease which the appellant/accused had. P.W.6 Dr. Chandra admits that the bruise found on the victim girl could not have been caused due to friction of the underwear. She also admitted that the victim girl was quite disturbed and could not give any history. Thus the evidence of the experts is not shaken.

11. Mr. Pai, the learned counsel appearing for the appellant/accused, has argued that the conviction is based on the uncorroborated testimony of P.W.3 Anita. He has further stated that P.W.3 Anita does not give the dates on which the appellant/accused had allegedly committed the offence. According to the learned counsel for the appellant/accused, the evidence is extremely vague and no conviction can be based on such evidence. It is further urged by him that the medical evidence, apart from a single bruise, does not corroborate the

version of P.W.1 Antoneta.

12. Mr. Sardessai, the learned Public Prosecutor appearing on behalf of the respondent State, has supported the Judgment of conviction.

13. It is no doubt true that the prosecutrix P.W.3 Anita is a minor. The Courts have to be extremely cautious while appreciating the evidence of a child witness, as a child witness is susceptible to being tutored. P.W.3 Anita has clearly stated that the appellant/accused, who is her father, had committed rape on her. There is nothing in the cross-examination to discredit the version of P.W.3 Anita. Nothing is suggested to her regarding any animosity nor is it brought on record that due to some enmity, she has been tutored to depose in that manner. The evidence, which is otherwise reliable, cannot be jettison on the fanciful reasoning of either the witness being a child witness or there is no corroboration. The evidence of P.W.3 Anita stands fully corroborated by the evidence of P.W.6 Dr. Chandra, who had examined her. P.W.6 Dr. Chandra had noticed one bruise and, according to her, the findings were suggestive of attempted vaginal penetration. A very strong corroboration is present in the presence of semen and spermatozoa which were detected in the vaginal swabs of P.W.3 Anita as per the

Chemical Analyser's report, which is at Exhibit P.W.7/B.

14. In the face of such strong evidence, according to me, the prosecution has proved the offence against the accused beyond reasonable doubt. The learned trial judge was, therefore, perfectly justified in recording the conviction and in passing the sentence, There is no merit in the submission for reduction in the sentence.

15. In the result, therefore, I see no merit in the appeal and the same is dismissed. The appellant/accused is in jail and, therefore, a copy of this Judgment be sent to the appellant/accused.

(P.V. HARDAS)
JUDGE.

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